Exhibit 1
(Filed Under Seal)

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

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In Re Bard IVC Filters Products Liability Litigation

No. MD-15-02641-PHX-DGC

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DO NOT DISCLOSE - SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

VIDEOTAPED DEPOSITION OF JOSHUA RIEBE, MD

TAKEN AT: Radisson Hotel
LOCATED AT: 2040 Airport Drive
Green Bay, WI

April 4, 2017
10:09 a.m. to 2:15 p.m.

REPORTED BY ANITA K. FOSS
REGISTERED PROFESSIONAL REPORTER

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A. No.

Q. Have you ever met with anybody from Bard or their representatives?

A. Legal team, no. I may have saw a Bard salesperson years ago, but nothing recent.

Q. But nothing in preparation for this deposition?

A. No.

Q. Okay. Have you ever given a deposition before?

A. No.

Q. All right. Well, let me just talk a little bit about a deposition. It's just a little different than a conversation. There's just a couple rules that I think both sides would appreciate if you would follow here, okay?

The first thing is that we have a court reporter obviously taking down everything, so they can't take down shakes of the heads, uh-huhs, uh-uhs. We need you to answer in the form of a word, okay?

A. Yes.

Q. All right. Second of all, if there's anything that either lawyer asks you that you don't understand or doesn't seem to make any sense to

A. Anytime we do an intervention on a patient, we want to try to help the patient have a good or a better outcome at minimizing the risk to them from that said procedure.

Q. As a doctor, safety is always paramount for you; correct?

A. Yes.

MS. DAVIS: Object to the form.

BY MR. GOLDENBERG:

Q. So when you are -- when you are advising -- when you are going to be inserting an IVC filter into a patient, do you typically have a conversation with the patient about the risks and the benefits?

A. Yes.

Q. Okay. We'll get into that in just a minute, but I want to talk a little bit about where you learn the information to be able to give that kind of an assessment to a patient. So where would you get information that would allow you to do a risk-benefit assessment and give the patient that information?

A. From the individuals training me.

Q. I'm sorry?

A. The individuals that train, or were

MS. DAVIS: Object to the form.

THE WITNESS: Can you repeat that? I was distracted.

BY MR. GOLDENBERG:

Q. Sure. That's okay. Would you agree that you need complete and accurate information regarding a filter from the manufacturer to help conduct a risk-benefit analysis?

A. Yes.

MS. DAVIS: Object to the form.

BY MR. GOLDENBERG:

Q. And if there are risks that are not disclosed or the true risks are not disclosed, then you cannot conduct a -- conduct a proper risk-benefit analysis for the patient; right?

A. Yes.

MS. DAVIS: Object to the form.

BY MR. GOLDENBERG:

Q. Is part of that analysis determining whether a patient should receive a permanent or retrievable filter?

A. Can you be more specific?

Q. Sure. When you're evaluating a specific patient and implanting a specific device in a patient, would that -- would part of that analysis

higher failure rates than other devices?

MS. DAVIS: Object to the form.

THE WITNESS: Yes.

BY MR. GOLDENBERG:

Q. Would you want to know if the rates of certain adverse events are substantially higher from one filter versus another?

A. Yes.

MS. DAVIS: Object to the form.

BY MR. GOLDENBERG:

Q. Would you want to know if the company had concerns about the efficacy of its own filter?

A. Yes.

MS. DAVIS: Object to the form.

BY MR. GOLDENBERG:

Q. Would you want to know if a newer, safe filter was available for use?

A. Yes.

Q. And by the way, if there are objections, and there inevitably will be, we just need to make sure we don't talk over each other. So she's allowed to object, but you can continue to give your answer, okay?

A. Okay.

Q. All right. Would you want to know if

Bard itself internally deemed the Recovery filter to have unacceptable risks?

A. Yes.

MS. DAVIS: Object to the form.

BY MR. GOLDENBERG:

Q. Would you want to know if Bard, even today, does not understand the root cause of why its filters are migrating?

MS. DAVIS: Object to the form.

THE WITNESS: Yes.

BY MR. GOLDENBERG:

Q. Would you want to know if they, even today, did not understand the root cause of why their filters are perforating?

A. Yes.

MS. DAVIS: Object to the form.

BY MR. GOLDENBERG:

Q. Or tilting?

A. Yes.

MS. DAVIS: Same objection.

BY MR. GOLDENBERG:

Q. Or fracturing?

A. Yes.

MS. DAVIS: Same objection.

BY MR. GOLDENBERG:

Q. Would you want to know if a company did not have a good understanding of long-term performance of its retrievable filters?

A. Yes.

MS. DAVIS: Object to the form.

BY MR. GOLDENBERG:

Q. Would you want to know if a company's lack of understanding of the dynamics of the vena cava impacted its ability to test the filter?

A. Yes.

MS. DAVIS: Object to form.

BY MR. GOLDENBERG:

Q. Would these things we just discussed inform your risk-benefit analysis?

MS. DAVIS: Object to the form.

THE WITNESS: I don't understand the phrasing of that question.

BY MR. GOLDENBERG:

Q. Sure. The things that you mentioned that you would like to know, if you did know those things, would that be helpful for you to discuss a risk-benefit analysis?

MS. DAVIS: Object to the form.

THE WITNESS: Yes.

BY MR. GOLDENBERG:

Q. Okay. And they would be important in terms of looking at patient safety; right?

A. Yes.

MS. DAVIS: Object to the form.

BY MR. GOLDENBERG:

Q. Would you expect a filter to be properly tested for safety prior to introduction for the market for use in human beings?

A. Yes.

Q. Do you know what beta testing is?

A. I've heard the term. I don't know the specifics.

Q. Okay. What is your understanding of what beta testing is?

A. I know it's a test that exists.

Q. You don't know how it works?

A. I don't know the specifics. I've heard the term.

Q. I'll just move on. Okay. We talked a little bit about sales reps, but I just want to make sure that I've exhausted this, and I'll move on quickly, okay. The -- I just want to make sure, do you interact with sales reps from companies whose filters you use, even today?

A. I don't understand how you phrased it.

Q. Okay. I'll re-ask it. That was kind of an awkward question. Are any of the IVC filter companies' representatives ever calling on you as a customer?

A. When?

Q. Anytime during the course of your practice.

A. Yes.

Q. Okay. And what do you remember about those calls?

MS. DAVIS: Object to the form.

THE WITNESS: I remember some salespeople being around in the hospital.

BY MR. GOLDENBERG:

Q. Okay. Have you ever had a sales rep in the operating room with you when you are implanting a filter?

A. Not -- not recently.

Q. Okay. At any time.

A. I can't remember long ago.

Q. Okay. Do you know if you ever note that -- if you note that or anybody else notes that in any of the records?

A. I would never note that.

Q. Okay. So it could have happened, but you

A. Correct.

Q. All right. And why is that?

A. We're putting a foreign body in the patient. We try very hard to put it in the correct place. If it moves from what we feel is not the correct place, we consider that a poor outcome.

Q. And that can have a bad reflection on safety of the patient; correct?

A. Generally, foreign bodies in places that -- where you don't want them is not good.

Q. So if we look at this little Recovery brochure, I want you to see that in the second paragraph, and tell me if I'm reading this correctly, it says, "Recovery. Recovery filter's unique self-centering design, proven conical shape, and bi-level filtering system create the ideal balance between clot-trapping efficiency and caval patency." Do you see that?

A. Yes.

Q. So is it your understanding that this was a self-centering design?

A. It's my understanding that this sentence says it's a self-centering design.

Q. Okay. Then if you turn the page to, and if you could hold this up for the jury, we're now

centered upon deployment."

BY MR. GOLDENBERG:

Q. That's good enough. And if you could, I'm looking at the top of this exhibit, and this is -- do you see that it's from a Janet Hudnall to a David Rauch?

A. Can you point?

Q. I can. Right there.

A. Yes.

Q. And the date of this is February 26, 2004?

A. Yes.

Q. All right. You can move on to the next exhibit. Would you have expected Bard to tell you if they were concerned about migration problems to the point that they were going to actually put that particular filter on hold? In other words, a silent recall?

MS. DAVIS: Objection to the form.

THE WITNESS: I'm not sure.

BY MR. GOLDENBERG:

Q. So if this company was so concerned about migration that it was considering putting it on hold, in other words, recalling it, you wouldn't want to know that as a doctor?

MS. DAVIS: Objection to the form.

THE WITNESS: I would want to know that.

BY MR. GOLDENBERG:

Q. Okay. And would you expect Bard to understand the root cause of why it would be migrating and causing deaths?

MS. DAVIS: Objection to the form.

THE WITNESS: I don't know that.

(Exhibit 917 marked for identification.)

BY MR. GOLDENBERG:

Q. I'm going to show you Exhibit No. 917. I'll just represent to you that this was a memorandum from a Doug Uelmen, E-U-L-A-N, February 13, 2004, regarding a filter meeting of February 12th of 2004. And if you could, I'd like you to turn to the third page of this exhibit. And on number eight.

A. Yes.

Q. I'll just represent -- I'll just first represent to you that there was a meeting that this represents. And if you go down to number eight, if you could just read that out loud, please.

A. Number eight. "The team discussed a threshold level for migration and agreed that if a migration requiring surgical intervention is

confirmed during the course of this investigation, the Recovery filters will be placed on hold pending the outcome of the investigation."

MS. DAVIS: Objection, form and foundation.

BY MR. GOLDENBERG:

Q. So if Bard determined that migration was a significant problem, you would want to know that as a doctor, wouldn't you, to know that they were putting this on hold pending an outcome of an investigation?

MS. DAVIS: Objection to the form.

THE WITNESS: Yes.

BY MR. GOLDENBERG:

Q. Okay. If we turn to the next page, we already talked about you indicating that you would want to understand if Bard did not understand the root cause. Could you read number nine, please?

A. Number nine. "Coordinate the review of all data to determine root cause/most probable cause using application problem-solving tools. A meeting will be scheduled to conduct this review, the time and place to be determined during a subsequent team meeting. Attendees will include the BPV investigation team along with" --

Q. That's okay. All right.

MS. DAVIS: Object to form.

BY MR. GOLDENBERG:

Q. And again, the date of this was February 12th of 2004; do you see that on the front?

A. Yes.

Q. Okay. Were you ever notified by anyone at Bard that as of May -- I'm sorry, as of April 7th of 2005, that they were going to be discontinuing this product?

A. I was not.

Q. Would you have wanted to know that?

A. Yes.

Q. And why?

A. Yes.

(Exhibit 918 marked for identification.)

BY MR. GOLDENBERG:

Q. I'm showing you Exhibit No. 918. And I'll just represent to you that this is an e-mail from a Jack Sullivan, who was in sales, to a Janet Hudnall, who was the director of marketing. And the subject says "FAQ and answers." Do you see that at the top?

A. Yes.

Q. And the date of this is 7/21/2005?
A. Yes.
Q. Okay. I'm just going to come down to the part where it says "lastly." And do you see where it says -- I'm just going to read this. It says, "Lastly, it was a little weird being on calls with Sean today and watching him sell the removability of Recovery when I know we aren't going to have it for much longer." Do you see that?
A. Yes.
Q. Then it says, "Is there anything we can do now to help these guys? They are out trying to hit a number, and we will be changing the device soon." Do you see that?
A. Yes.
Q. Move to the next one. And you were not aware of that; correct?
A. Correct.
Q. I've asked you this before, but I'm going to ask a little different way. Would you have expected Bard to have done a safety study on the Recovery filter?
MS. DAVIS: Object to the form.
THE WITNESS: Yes.
BY MR. GOLDENBERG:

Q. And why would that be important to you?
A. We like to use safe equipment on our patients.
(Exhibit 919 marked for identification.)
BY MR. GOLDENBERG:
Q. Showing you what's been marked 919. And I'll just represent to you that this is something called internal question and answer. It says C.R. Bard Recovery vena cava filter, version August, 2004. Do you see that?
A. Yes.
Q. And I'm just going to -- it says on the top, it says, "Internal Q and A to be used, approved by approved corporate spokespeople to respond consistently to inquiries from media. Not to be handed out externally to any audiences." Do you see that?
A. Yes.
Q. Did I read that correctly?
A. Yes.
Q. I'm going to turn to page 3 of this. And if you could read number six for us, please.
MS. DAVIS: Object to the form.
BY MR. GOLDENBERG:
Q. The question and the answer.

know that the reports of death, filter migration, IVC perforation and filter fracture with Recovery were four and even sometimes five times higher than all other filters on the market?

MS. DAVIS: Objection, form, lack of foundation.

THE WITNESS: Can you rephrase that?

BY MR. GOLDENBERG:

Q. Sure. Would it have been important for Bard to tell you that their filters were fracturing, migrating, and killing people at four to five times greater rates than all other filters on the market?

MS. DAVIS: Objection, form, lack of foundation.

THE WITNESS: Four and five times a small number is still a small number. However, absolute data and rigorous analysis of the numbers would be important, yes.

BY MR. GOLDENBERG:

Q. And so you would expect Bard to analyze those and at least come to a root cause analysis, wouldn't you?

A. Yes.

MS. DAVIS: Object to the form.

BY MR. GOLDENBERG:

Q. And you would want to know what the root cause analysis is so you could help make an understanding to the patient of what the safety of this device would be?

A. Yes.

MS. DAVIS: Objection to the form.

(Exhibit 921 marked for identification.)

BY MR. GOLDENBERG:

Q. I'm showing you Exhibit 921. And you indicated that you were interested in seeing numbers. This is a memo on August 3rd of 2005, so within a couple months of the time you actually inserted the filter into my client. And this is called IVC Recovery Filter Adverse Events Executive Summary; do you see that?

A. Yes.

Q. Okay. And do you see that actually lists all the different migrations and then what happened from those migrations?

A. Yes.

Q. Okay. And do you see that there's deaths, and there's also everything from migration of the filter encased in large thrombi, to fatalities?

A. Yes.

MS. DAVIS: Objection to the form and lack of foundation to all these questions regarding this Exhibit 941.

BY MR. GOLDENBERG:

Q. If you could, I'd like you to look at the chart where it says "compare MAUDE data for IVC filter fatalities." Do you see that?

A. Yes.

Q. And do you see that the SNF, which I'll represent to you is the Simon Nitinol filter that was the permanent filter that preceded Recovery by Bard, how many fatalities were there with the SNF?

MS. DAVIS: Same objection.

THE WITNESS: It's reported as zero percent.

BY MR. GOLDENBERG:

Q. Okay. And migration, what is it reported as?

A. 0.0027 percent.

Q. So that would be less than one percent; correct?

A. Correct.

Q. All right. And under Recovery, what's the percentage of fatalities?

BY MR. GOLDENBERG:

Q. And how about in terms of tilt, where would Recovery rank?

A. The second.

Q. Okay.

MS. DAVIS: Object, lack of foundation as to all questions regarding Exhibit 923.

BY MR. GOLDENBERG:

Q. I want to switch gears for just a minute and talk about my client just for a second. I'm going to represent to you that my client, as of the time of her implantation, was 5'11, 278 pounds, okay?

A. Okay.

Q. All right. And her BMI was about 38.

A. Okay.

Q. Would you agree with me that morbidly obese would be about 40?

A. I don't keep up on those terms.

Q. That's fine. Okay. In any regard, she wouldn't be a small lady; correct?

A. Correct.

Q. And respectfully, do you have any opinions as to whether or not a person's weight would make any difference as to what filter you

would implant in that person as of 2005?

A. I did not consider weight when selecting filters at that time.

Q. Did anyone tell you that weight was a very important consideration?

A. No.

MS. DAVIS: Object to the form.

BY MR. GOLDENBERG:

Q. Okay. If Bard knew that obesity and morbidly obese people have much larger expansion of their vena cavas than other -- than other patients, would you have wanted to know that if they knew that information?

A. Yes.

MS. DAVIS: Object to the form.

BY MR. GOLDENBERG:

Q. And why would you want to know that?

A. It would help me select which product I would use.

Q. Okay. I mean, it could matter keeping the product in place; correct?

MS. DAVIS: Object to the form.

THE WITNESS: Yes.

BY MR. GOLDENBERG:

Q. Okay.

(Exhibit 924 marked for identification.)

BY MR. GOLDENBERG:

Q. Showing you what's been marked Exhibit 924. And I'll represent to you that this is a letter or a -- these are e-mails that go back and forth. And I'm referring you just to the middle of the page, where this is from John McDermott. Do you see that?

A. Yes.

Q. You mentioned a person that trained you at the University of Wisconsin. Am I missing that? What was his name again? It wasn't McDermott, was it?

A. Yes, I was trained by a person named John McDermott at the University of Wisconsin.

Q. Okay. I thought that was the case. Okay. So this is actually from -- a memo from John McDermott; do you see that?

A. Yes.

Q. Okay. And it's to John Weiland and David Ciavarella. And I'll just represent to you, again, that David Ciavarella is the medical director for Bard at the time, okay?

A. Yes.

Q. And then Janet Hudnall and others are, in

next page, excuse me, under B. I'm sorry, so it's -- there's A and B, do you see that at the top there?

A. Yes.

Q. Okay. Under the small B, if you could read that, please.

A. "The two independent data sets, MAUDE report rates and bench testing results, contain significant signals regarding vena cava filter performance related to migration."

Q. Were you aware of that before you inserted this into my client?

A. No.

MS. DAVIS: Same objections.

BY MR. GOLDENBERG:

Q. Under the large B, could you read that for me, please?

A. "The independent consultant's report concluded that the data and his analysis provided two significant signals that further investigation, particularly in relation to migration and fracture, is urgently warranted. The consultant, however, also cautioned that given the multiple known flaws in the data available, this analysis is insufficient to demonstrate conclusively that any

A. Prior to actually deploying the IVC filter, we generally perform a cavagram, injecting dye into that vein to see the size, see if there's clot in there, and also see where the renal veins are positioned.

Q. And what is the -- what is the reason that you want to make sure that you understand the size?

A. Very large cavas, some people call them mega cavas, often do not hold certain filters well. Where I trained we, if you had a mega cava, most often you would switch to a Bird's Nest at that point.

Q. Okay. The Recovery filter, is it mentioned at all in any of these records?

A. The name Recovery?

Q. Yes.

A. Yes, if you look slightly above the word Findings, that paragraph that begins "The wire," about halfway through it said, "The Bard Recovery caval filter was deployed." Now, Recovery is not capitalized, but that's a transcription issue.

Q. I understand. So you would transcribe your notes after you do the procedure; is that right?

rather prominent in transverse diameter. Calculation was made based off of vertebral body correlation from CT scan chest. This estimated that the cava was between 28 and 29 millimeters, which was at the upper limits of cava size for Recovery filter. This was deployed carefully and set well with the filter, demonstrating good position at the conclusion of the procedure."

Q. So clearly this was a cava that was at the edge of the upper limits of cava size for a Recovery; correct?

A. My measurements indicate that, yes.

Q. And again, how did you measure this again?

A. Well, obviously I can't remember exactly what I did on that day in 2005. However, the documentation suggests that I was having difficulty with the x-ray imaging that we take during the exam, so I had to go to a reference CT scan to get my best estimate of the overall size, and I used that information off of a previous CT scan.

Q. All right.

A. There's a high degree of magnification when you're using an x-ray. And larger patients, you have to bring the equipment further away from

reasons that you typically would consider in whether to place a permanent versus a retrievable filter in a patient?

A. In extremely elderly patients that are probably going to outlive any potential complications, we often put something permanent in. As the patients are younger, it's often nice to put in something retrievable in the event that their current disease state can be treated with whatever's available, and you never know when other treatments become available and are invented. So we always think if there's a foreign body in the -- in the patient, get it out if we can.

Q. And in Ms. Tinlin's case, she was, according to the records, going to undergo additional testing that potentially could have revealed that she did not have a hypercoagulative state?

A. Correct. And the medical record also says she's 41, I think.

Q. So putting a retrievable filter in someone like Mrs. Tinlin, did that give you more options for the future?

A. Yes.

Q. At the time you placed the Recovery

Q. Okay. I have such a protective order here with me, and I'll -- when we go off the record, I'll ask you to take a look at it and sign it. And then --

A. I should -- if I have to sign two inches' worth, then I'm not going to sign. That's a big stack.

Q. No, that's not it. It's right here, if you want to look at it.

MR. GOLDENBERG: Can we do this after?

MS. DAVIS: Sure, yeah. But this is it.

THE WITNESS: Okay. This is --

MS. DAVIS: But yes, we can do it after the deposition. Absolutely. I don't have any more questions at this time.

THE WITNESS: Okay.

MS. DAVIS: Thank you, Doctor.

E X A M I N A T I O N

BY MR. GOLDENBERG:

Q. I just have a few.

A. Okay.

Q. Doctor, again, Stuart Goldenberg. I just wanted to ask you, when you are talking with the patient about the risks and benefits of a device like the Bard IVC filter, the Recovery, you can

only convey what you know; correct?

A. Correct.

Q. All right. If a company is hiding important safety information, there's no way for you to know that, is there?

A. Correct.

MS. DAVIS: Object to the form.

BY MR. GOLDENBERG:

Q. I think we're all making an assumption here that vena cava filters can prevent blood clots. Is that your understanding?

A. No, the vena cava filters can prevent clots from moving to places where you don't necessarily want them.

Q. Good -- good point. And what's the basis for that?

A. It's a mechanical basis.

Q. But what medical studies are you aware of that show that?

MS. DAVIS: Could you let him finish his answer?

THE WITNESS: I'm not -- I'm not -- I don't know specific studies.

BY MR. GOLDENBERG:

Q. Are you aware that there has been a great